

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE CITY OF NEW YORK,

Plaintiff,

**NOTICE OF MOTION FOR
SUMMARY JUDGMENT**

-against-

MILHELM ATTEA & BROS., INC., DAY
WHOLESALE, INC., GUTLOVE & SHIRVINT, INC.,
MAURO PENNISI, INC., JACOB KERN & SONS,
INC., WINDWARD TOBACCO, INC. and CAPITAL
CANDY COMPANY, INC.

Civil Action No. 06-CV-3620
(CBA)(ALC)

Defendants.

PLEASE TAKE NOTICE that, upon the affidavit of Peter Day, sworn to on November 3, 2010, and filed under seal with supporting exhibits, the affirmation of Margaret A. Murphy, Esq., dated November 3, 2010 and filed under seal with supporting exhibits, and the accompanying memorandum of law dated November 4, 2010, Defendant Day Wholesale, Inc. ("Defendant"), by its respective undersigned counsel, shall move this Court, on a date and time to be determined by this Court, or as soon as counsel may be heard for an order pursuant to Rule 56 of the Federal Rule of Civil Procedure, and the applicable Local Rules of the United States District Court of the Eastern District of New York, granting Defendant's motion for summary judgment and dismissing the amended complaint filed by Plaintiff City of New York ("Plaintiff"), and for such other and further relief as this Court deems just and proper.

DATED: Buffalo, New York
November 3, 2010

Respectfully submitted,

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